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MARK POPE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Pope International,
Plaintiff,
vs.
Patricia Crowell,
Defendant.

CASE NO. C07 05930 JW

**MARK POPE'S ANSWER TO FIRST
AMENDED COUNTERCLAIM**

Patricia Crowell, an individual
Counterclaimant
vs.
Pope International, a California
corporation,
Counterdefendant.

Patricia Crowell, an individual
Third Party Plaintiff,
vs.
Mark Steven Pope, aka Mark S. Pope and
aka Mark Pope, individually an as he does
business under the trade name and style of
Bounty Hunter, Bounty Hunter Rare Wine,
and/or Bounty Hunter Rare Wine and
Provisions,
Third Party Defendant.

1 Third Party Defendant, Mark Pope, ("Pope"), by his undersigned attorneys, as and for his
2 Answer to the First Amended Counterclaim, alleges as follows:

- 3 1. Answering Paragraph 1 of the First Amended Counterclaim, Pope denies the
4 allegations contained therein.
- 5 2. Answering Paragraph 2 of the First Amended Counterclaim, the nature of the relief
6 sought by Defendant and Counterclaimant, Patricia Crowell ("Crowell") as set forth
7 in Paragraph 2 speaks for itself and Pope denies that Crowell is entitled to the relief
8 requested.
- 9 3. Answering Paragraph 3 of the First Amended Counterclaim, Pope denies the
10 allegations contained therein.
- 11 4. Answering Paragraph 4 of the First Amended Counterclaim, Pope admits the
12 contents therein.
- 13 5. Answering Paragraph 5 of the First Amended Counterclaim, Pope denies the
14 allegations contained therein.
- 15 6. Answering Paragraph 6 of the First Amended Counterclaim, Pope denies the
16 allegations contained therein.
- 17 7. Answering Paragraph 7 of the First Amended Counterclaim, Pope denies the
18 allegations contained therein.
- 19 8. Answering Paragraph 8 of the First Amended Counterclaim, Pope is without
20 knowledge as to the allegations contained therein and on such basis denies such
21 allegations.
- 22 9. Answering Paragraph 9 of the First Amended Counterclaim, Pope admits the
23 allegations contained therein.
- 24 10. Answering Paragraph 10 of the First Amended Counterclaim, Pope denies that he is
25 an individual doing business as Bounty Hunter, Bounty Hunter Rare Wines, and/or
26 Bounty Hunter Rare Wines and Provisions, and otherwise admits the remaining
27 allegations contained therein.

11. Answering Paragraph 11 of the First Amended Counterclaim, Paragraph 11 speaks for itself and requires neither an admission or denial.
12. Answering Paragraph 12 of the First Amended Counterclaim, based upon information and belief as reflected by the records of the U.S. Patent and Trademark Office (USPTO), Pope admits that Crowell filed the alleged trademark application, but denies that the application was to register a trade name.
13. Answering Paragraph 13 of the First Amended Counterclaim, Pope admits that Wine Scout filed the service mark application Serial No. 77199035 and denies the remaining allegations contained therein.
14. Answering Paragraph 14 of the First Amended Counterclaim, Pope denies the allegations contained therein.
15. Answering Paragraph 15 of the First Amended Counterclaim, Pope admits, upon information and belief based upon review of the USPTO database, that Crowell's trademark/service mark application was approved for publication on January 23, 2008, admits that the USPTO has suspended Wine Scout's service mark application for WINE SCOUT, and denies the remaining allegations contained therein.
16. Answering Paragraph 16 of the First Amended Counterclaim, Pope is without sufficient information to admit or deny the allegation contained therein and on such basis denies the allegation.
17. Answering Paragraph 17 of the First Amended Counterclaim, Pope admits the stated content of the TMEP, but otherwise denies the remaining allegations contained therein.
18. Answering Paragraph 18 of the First Amended Counterclaim, Pope denies the allegations contained therein to the extent the allegations are based upon a hypothetical rather than factual situation.
19. Answering Paragraph 19 of the First Amended Counterclaim, Pope admits the allegations of the Complaint filed by Wine Scout as stated therein and otherwise denies all remaining allegations included in Paragraph 19.

- 1 20. Answering Paragraph 20 of the First Amended Counterclaim, Pope admits that
2 Wine Scout has stated its intent is to prohibit, inhibit and/or restrain Crowell from
3 using the name or any mark encompassing the term WINE SCOUT on or in
4 association with wine or wine-related goods or services based upon Wine Scout's
5 prior service mark rights in the WINE SCOUT mark, and otherwise denies the
6 remaining allegations.
- 7 21. Answering Paragraph 21 of the First Amended Counterclaim, Pope admits the
8 services description of its service mark application for WINE SCOUT, is without
9 knowledge as to all of the goods and services under which Crowell uses THE
10 WINE SCOUT mark, and on such basis denies the allegations in the second
11 sentence of the paragraph describing the services with which Crowell does not use
12 the mark, and denies all remaining allegations.
- 13 22. Answering Paragraph 22 of the First Amended Counterclaim, Pope admits that
14 Wine Scout uses and has used the trade name Wine Scout, is without knowledge as
15 to all business activities with which Crowell uses and has used The Wine Scout
16 name and mark, and on such basis denies the allegations in the second sentence of
17 the paragraph describing the business activities with which Crowell does not use the
18 name and mark, and denies all remaining allegations.
- 19 23. Answering Paragraph 23 of the First Amended Counterclaim, Pope admits to the
20 accuracy of the cited content from the Wine Scout web site, is without knowledge
21 as to all business activities with which Crowell uses and has used THE WINE
22 SCOUT name and mark, and on such basis denies the allegations in the second
23 sentence of the paragraph describing the business activities with which Crowell
24 does not use the name and mark, and denies all remaining allegations.
- 25 24. Answering Paragraph 24 of the First Amended Counterclaim, Pope admits that
26 Wine Scout's complaint alleges violation of Wine Scout's trade name rights in
27 Wine Scout by Crowell, and denies the remaining allegations in Paragraph 24.

- 1 25. Answering Paragraph 25 of the First Amended Counterclaim, Pope admits that
2 Wine Scout has not offered podcasts about wine tasting or wine trips under its
3 WINE SCOUT mark, admits it is using Win Scout as a trade name as a negotiant
4 and vintner and denies the remaining allegations in Paragraph 25.
- 5 26. Answering Paragraph 26 of the First Amended Counterclaim, Pope re-alleges and
6 incorporates by reference its responses to Paragraphs 1 through 25 of the First
7 Amended Counterclaim.
- 8 27. Answering Paragraph 27 of the First Amended Counterclaim, the allegation speaks
9 for itself.
- 10 28. Answering Paragraph 28 of the First Amended Counterclaim, Pope denies that there
11 are justiciable controversies between Pope and Crowell, and denies the remaining
12 allegations.
- 13 29. Answering Paragraph 29 of the First Amended Counterclaim, Pope admits that
14 Wine Scout has filed a complaint against Crowell alleging various service mark
15 violations, but denies the remaining allegations in Paragraph 29.
- 16 30. Answering Paragraph 30 of the First Amended Counterclaim, Pope denies the
17 allegations contained therein.
- 18 31. Answering Paragraph 31 of the First Amended Counterclaim, Pope denies that the
19 requested declaratory judgment is necessary as the Court's ruling as to Wine
20 Scout's infringement claim will resolve all issues raised by the declaratory
21 judgment action.
- 22 32. Answering Paragraph 32 of the First Amended Counterclaim, Pope re-alleges and
23 incorporates by reference its responses to Paragraphs 1 through 31 of the First
24 Amended Counterclaim.
- 25 33. Answering Paragraph 33 of the First Amended Counterclaim, Pope denies that there
26 are justiciable controversies between Pope and Crowell.
- 27 34. Answering Paragraph 34 of the First Amended Counterclaim, Pope denies that there
 are justiciable controversies between Pope and Crowell.

35. Answering Paragraph 35 of the First Amended Counterclaim, Pope denies the allegations contained therein.

36. Answering Paragraph 36 of the First Amended Counterclaim, Pope denies the allegations contained therein.

37. Answering the second Paragraph 37 of the First Amended Counterclaim, Pope denies the allegations contained therein.

AFFIRMATIVE DEFENSES

1. Crowell has failed to state a claim upon which relief can be granted.

2. There is no case or controversy between Pope and Crowell.

3. There is no underlying coercive claim which Pope may exert against Crowell

PRAYER FOR RELIEF

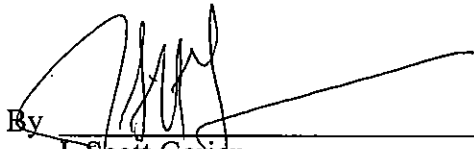
WHEREFORE, Pope demands judgment dismissing the Counterclaim, awarding it the costs, expenses, and attorneys' fees it incurs in defending this matter, and awarding it such other relief as the Court deems just and proper.

Dated: 4/24/08

Respectfully submitted,

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By


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